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A LIMITED LIABILITY COMPANY

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May 14, 2010

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Honorable Noel L. Hillman
Mitchell H. Cohen Buildings & U.S. Courthouse
4th & Cooper Streets, Room 1050
Camden, New Jersey 08101

Re: *Thomas Mason, et al. v. The Coca-Cola Company*
Case No: 1:09-cv-00220 (NLH)

Dear Judge Hillman:

We represent The Coca-Cola Company ("Coca-Cola") in this matter. We write in response to Plaintiffs' submission of supplemental authority in connection with Coca-Cola's pending Motion to Dismiss Plaintiffs' Second Amended Complaint, alerting the Court to the relatively recent opinion of the United States District Court of the Eastern District of New York in *In Re Bayer Corp. Combination Aspirin Products Marketing and Sales Practices Litigation*, 1:09-md-2023.

Contrary to Plaintiffs' suggestions, the reasoning of *In Re Bayer Corp.* actually supports Coca-Cola's position on the pending Motion to Dismiss. The complaint in this case is based centrally on the issuance of an FDA warning letter. As the Court in *In Re Bayer Corp.* makes clear, a plaintiff suing based solely on conduct that violates the Food Drug & Cosmetic Act is preempted from bringing such claims under *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341 (2001). Such is the case here. Plaintiffs are "effectively suing for a violation of the FDCA (no matter how the plaintiff labels the claims), and the plaintiff's claim is thus impliedly preempted." *See In Re Bayer Corp.*, at 16.

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For the reasons set forth in Coca-Cola's briefs in support of the motion to dismiss, Plaintiffs' complaint should be dismissed as a matter of law.

Respectfully submitted,

THE WOODHOUSE LAW FIRM

A handwritten signature in black ink, appearing to read 'Sam/11', is positioned above the printed name.

Samuel S. Woodhouse

SSW/jsc

cc: Jeffrey S. Cashdan (via CM/ECF)
Maureen V. Abbey (via CM/ECF)
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